Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 79-5485

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

PRESTON SELLERS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D. C. 20530

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MEMORANDUM FOR THE UNITED STATES

Petitioners contend that the imposition of special parole terms as part of their sentences for conspiracy to violate federal narcotics laws is unlawful.

Following a jury trial, petitioners were convicted in the United States District Court for the Southern District of Iowa on one count of conspiracy to distribute heroin, in violation of 21 U.S.C. 846. Petitioners each were sentenced to four years' imprisonment to be followed by three year terms of special parole. The court of appeals affirmed (Pet. App. 1-15).

The question presented in this case is identical to that presented in Bifulco v. United States, cert. granted, No. 79-5010 (Oct. 9, 1979).[1/] In that case, the court of appeals held that it is proper to impose a special parole term for a drug conspiracy in violation of Section 846 whenever such a term is required for the substantive offense. Bifulco v. United States, 600 F.2d 407, 409-410 (2d Cir. 1979). With one exception,[2/] every other court of appeals that has considered this question has reached the same conclusion. Cantu v. United States, 598 F.2d 471, 472 (5th Cir. 1979); United States v. Burman, 584 F.2d 1354, 1357-1358 (4th Cir. 1978); United States v. Jacobson, 578 F.2d 863, 867-868 (10th Cir.), cert. denied, 439 U.S. 932 (1978). See also United States v. Dankert, 507 F.2d 190, 191 (5th Cir. 1975). We believe that the holding in Bifulco and these other cases is correct, and that imposition of a special parole term as part of petitioners' sentences was therefore proper. Nonetheless, because this question is presently before the Court we believe that consideration of this petition should be deferred pending the Court's decision in Bifulco.

Respectfully submitted.

WADE H. McCREE, JR.
Solicitor General

NOVEMBER 1979

1/ We are sending petitioners' counsel copies of the government's response to the petition in Bifulco.

2/ United States v. Mearns, 599 F.2d 1296 (3d Cir. 1979), petition for cert. pending, No. 79-415.